

INTERNATIONAL TAX CONFERENCES  
OF THE UNIVERSITY OF LUXEMBOURG

# Landmark Decisions of the ECJ in Direct Taxation

Edited by  
Werner Haslehner  
Georg Kofler  
Alexander Rust



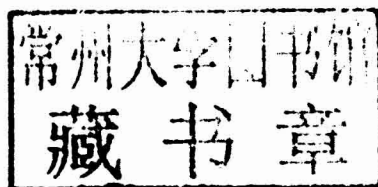
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# Landmark Decisions of the ECJ in Direct Taxation

## International Tax Conferences of the University of Luxembourg

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### VOLUME 4

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#### *Series Editor*

Prof. Dr. Werner Haslehner, ATOZ Chair for European and International Taxation

The Series was originally established by Prof. Dr. Alexander Rust, ATOZ Chair for European and International Taxation 2010-2014

#### *Introduction*

The ATOZ Chair for European and International Taxation was established at the instigation of the ATOZ Foundation at the Faculty of Law, Economics and Finance in June 2009 in order to develop research activities and education of high quality in international and European tax law. The overarching goal of ATOZ in this partnership is to raise the level of knowledge of tax issues in Luxembourg. In addition to directing the Faculty's Master Programme in European and International Tax Law, the ATOZ Chair also organizes an annual international tax conference at the University of Luxembourg. Based on these conferences, the Series publishes the different perspectives from tax practitioners, academics, and government representatives who explore issues of international and EU tax law from all relevant angles, in order to promote inter-institutional dialogue on questions of taxation.

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The Series should be particularly useful for practitioners of international tax law, as a first introduction to the topic covered by each volume, as a valuable resource for updated information on most recent developments, or as a source of deeper understanding of the issues. It should further attract significant interest of academics in this field, both graduate students and professors, as an important and solid source of topical information and analysis.

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## Preface and Acknowledgements

This book is the fourth volume of the Series '*International Tax Conferences of the University of Luxembourg*', which was established by the University's Chair for European and International Taxation in 2010 with the goal of providing cutting-edge analysis and insight on current issues of international and European tax law. The conferences bring together leading tax experts from different fields of tax practice, academia, and government to facilitate high-level discussions that are both topical and reflective, and that foster inter-institutional dialogue on tax issues.

This book is the result of a conference held at the University of Luxembourg on 23 January 2014, which aimed to analyse the Court of Justice's most important decisions on direct taxation and their transformative impact on direct taxation in the EU over the last three decades. Each chapter in this book is based on the authors' presentations at the conference, in which they focused on a particular landmark decision of the Court of Justice as a starting point for the development of a specific doctrine and followed its development through decisions in later years, critically assessing the strengths and weaknesses of the Luxembourg Court's reasoning and its path through the complex field of cross-border income taxation. Due to the nature of this project, the individual chapters' topics, such as the *Schumacker* doctrine, the *Marks & Spencer* exception, or the impact of *Cadbury Schweppes*, will seem familiar to readers who are well versed in EU tax law. Yet, the depth of the analysis of each landmark case, which is explored from its historic roots and original reasoning, allows the reader to gain an unparalleled understanding of the development and minute changes in the relevant subsequent jurisprudence as the authors chart a way through the nuances of the Court's arguments. Necessarily a snapshot of the current state of the law, it allows this book to remain relevant as the jurisprudence develops further over the years to come.

The chapters were finalized in the months following the conference, during which time they were updated by the speakers to take account of more recent developments in jurisprudence and to integrate the comments made during the debates following the conference presentations, at which leading experts from the EU judiciary and the EU Commission were present. The editors are very grateful to the authors for their continued commitment not only to speak at the conference, but also to complete

the written chapters in due time. The editors would further like to express their sincere gratitude towards the commentators at the conference, whose insightful perspectives significantly improved the intellectual debate during the conference and were invaluable in enhancing the substance of this book. We would like to especially thank the President of the EFTA Court, Carl Baudenbacher, EFTA Court Judge Pall Hreinsson, former first Advocate General Christine Stix-Hackl, Richard Lyal from the EU Commission's legal service, Lars Dobratz, Référendaire of AG Kokott and Paschalis Paschalidis, Référendaire of AG Wathelet, for their participation in the conference and their willingness to share their insights with all participants.

The editors are also very thankful for the cooperation with the ECJ Task Force of the *Confédération Fiscale Européenne*, as many of the contributors to this volume form part of that working group. We also wish to thank Keith O'Donnell, managing partner at ATOZ and the ATOZ Foundation, which generously sponsors the ATOZ Chair for European and International Taxation and its activities, including the establishment of this conference series.

We further owe thanks to our publisher Kluwer and, especially, Simon Bellamy, for their professional and kind assistance through the publication process and for assuring the timely publication of this book. We are, finally, sincerely grateful for the assistance of Suzanne M. Larsen, who edited the chapters contained in this book.

Werner Haslehner  
Georg Kofler  
Alexander Rust

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